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November 16, 2020

VIA ECF

The Honorable Ronnie Abrams
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: Eckhart, et al. v. Fox News Network, LLC, et al.; Civ. Case No. 1:20-cv-5593 (RA)

Dear Judge Abrams:

We represent Plaintiff Jennifer Eckhart in this action against Fox News Network, LLC (“Fox News”) and Ed Henry. We write in response to Catherine Foti, Esq.’s November 16, 2020 letter seeking permission to file successive motions to strike allegations and to dismiss the Third Amended Complaint. Put simply, it is our view that the motions should be filed together.

We do not believe that it is appropriate to litigate the merits of a motion to strike in the context of seeking permission to file successive motions. However, Ms. Foti’s letter, which does just that, makes clear that the anticipated motions should be filed together. It appears that Mr. Henry’s motion to strike is targeted at allegations concerning Fed. R. Civ. P. 404(b) evidence that other women have been victimized by Mr. Henry, along with allegations that at least some of those women put Fox News on notice of his predilection for misconduct long before Ms. Eckhart came forward. Ms. Foti also takes issue with references to retaliatory conduct in which she engaged in another litigation involving Fox News.

The allegations at issue are plainly relevant to: (i) Mr. Henry’s *modus operandi* and intent; (ii) Fox News’ knowledge of Mr. Henry’s conduct; and (iii) Fox News’ likely involvement in the decision to improperly file salacious photographs of Ms. Eckhart in an effort to retaliate against and harass her. These issues are directly relevant not only to establishing liability, but also to rebut arguments made by Fox News and Mr. Henry in their first set of motions to dismiss.

We submit that there is no basis to strike these allegations. But, even if certain allegations are ultimately stricken, the issues to which these allegations generally relate will still presumably be subjects of the forthcoming motions to dismiss. Thus, there is no reason to prolong this litigation and create inefficiency by briefing two separate motions consecutively. The fact that Jane Doe 1, a current employee of Fox News, has now stated that three allegations (out of 12 paragraphs of

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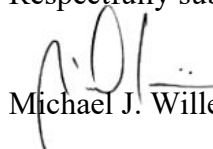
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allegations related to her) are inaccurate does not change the analysis. Ms. Eckhart had and has a good faith basis for her allegations, and it is not at all uncommon for employees of a defendant to attempt to mitigate the impact of things that they have stated to a plaintiff. This simply creates a fact issue – one that must be decided at trial, not on a motion to strike. Of course, if during the course of discovery, the inaccuracy of any particular allegation is established beyond a doubt, we will conform the pleadings to the proof.

As noted by Ms. Foti, we do not oppose Mr. Henry's proposed briefing schedule.

Respectfully submitted,


Michael J. Willemine